

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.)	Facility ID No. 9993
)	
Permittee of FM Station KYAF,)	
Firebaugh, California)	
)	
H. L. CHARLES D/B/A FORD CITY BROADCASTING)	Facility ID No. 22030
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY BROADCASTING)	Facility ID No. 37725
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY BRIEF IN SUPPORT OF ITS SUPPLEMENTAL
MOTION TO ADD ISSUES WITH PROPOSED ORDER**

1. Pursuant to Sections 1.229 and 1.294(c) of the Commission's rules (Rules),¹ the Chief, Enforcement Bureau (Bureau), by his attorneys, hereby respectfully replies to the Opposition filed by Avenal Educational Services, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley) to the Bureau's Supplemental Motion to Add Issues With Proposed Order (Opposition).² The Bureau also replies to the Opposition filed by Mr. Zawila on behalf of himself, Avenal, Central Valley and the respective Estates of Linda Ware and H.L. Charles.³

The Bureau's Reply to Avenal and Central Valley's Opposition

2. In its Motion, the Bureau requested that the Presiding Judge add to this proceeding the issue of Avenal and Central Valley's ownership and control, and the issue of whether Avenal and Central Valley were qualified applicants at the time they filed their respective applications for Stations KAAX (FM) and KYAF (FM).⁴ At its core, Avenal and Central Valley's Opposition challenges the Bureau's Motion as procedurally defective.

3. With regard to the question of who owns and/or controls Avenal and Central

¹ See 47 C.F.R. §§ 1.229 and 1.294(c).

² See Opposition to Enforcement Bureau's Supplemental Motion to Add Issues With Proposed Order, filed June 24, 2015 (Avenal and Central Valley's Opposition).

³ See Opposition to Enforcement Bureau's Supplemental Motion to Add Issues With Proposed Order, dated June 25, 2015 (Zawila's Opposition). The Bureau notes that Mr. Zawila did not fax a courtesy copy of this filing to the Enforcement Bureau until four days later -- June 29, 2015. The Bureau respectfully requests that the Presiding Judge instruct Mr. Zawila that he must fax a copy of his pleadings on the same day as they are filed so that the Bureau is not prejudiced in its ability to respond.

⁴ See Enforcement Bureau's Supplemental Motion to Add Issues With Proposed Order, filed June 18, 2015 (Motion).

Valley, Avenal and Central Valley's Opposition suggests that the Bureau's Motion is defective because it does not contain "specific allegations of fact sufficient to support the action requested."⁵ The Opposition asserts that the only basis for the Bureau's Motion is the concern that if someone other than Mr. Zawila controlled Avenal and Central Valley, then there is a question as to whether other individuals should participate as parties.⁶ This is not accurate.

4. As Avenal and Central Valley are well-aware, in *Order*, FCC 15M-21, the Presiding Judge specifically asked the Bureau to seek the addition of the ownership and control issue to the above-captioned proceeding because of its "decisional importance" to Issues already designated for hearing.⁷ On this basis alone, the Bureau's Motion is procedurally proper.

5. In addition, in accordance with Section 1.229(c) of the Rules, any party may seek to modify the issues where the motion "raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing"⁸ or where other "good cause is shown for the delay in filing."⁹ In accordance with this Section, the Bureau's Motion demonstrates how the resolution of the ownership question may have decisional significance to issues designated in the Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order (HDO).¹⁰ In particular, the question of who had the proper authority to make representations on behalf of Avenal and Central Valley concerning the construction and/or operation of Stations KAAX (FM) and KYAF (FM), and who

⁵ Opposition at 5 (citation omitted).

⁶ See Opposition at 5-6.

⁷ See *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015), at 3.

⁸ 47 C.F.R. § 1.229(c).

⁹ *Id.*

¹⁰ *In re Zawila*, Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (Jul. 16, 2003) (HDO).

was responsible for ensuring that Avenal and Central Valley complied with Commission's rules concerning the operation of these Stations, is of decisional significance to Issues 113 (a)–(e) designated in the HDO.¹¹

6. Avenal and Central Valley appear to suggest that their ownership and control is irrelevant because “the question of licensee culpability is wholly derivative of what may turn up in the evidence against Zawila.”¹² However, the HDO plainly requires the Presiding Judge to determine whether, in addition to Mr. Zawila, Avenal and Central Valley also willfully or repeatedly violated Sections 73.1125, 73.3526, and 17.57 of the Rules.¹³ It also requires that the Presiding Judge determine whether Avenal and Central Valley possess the requisite qualifications to be or remain permittees of their respective radio stations.¹⁴ Thus, the question of who owned and/or controlled Avenal and Central Valley is plainly of decisional significance and the Bureau's Motion is proper.

7. As to the question of whether Avenal and Central Valley were qualified applicants under Section 73.503(a) of the Rules at the time of their respective applications for construction permits for Stations KAAX (FM) and KYAF (FM), Avenal and Central Valley suggest the Bureau's Motion is untimely. Yet, as set forth above, any party may seek to modify the issues, even after the expiration of the applicable 15-day time period, where the motion “raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.”¹⁵ The Bureau's Motion meets that standard.

¹¹ See Motion at 3–4.

¹² Opposition at 6.

¹³ See HDO at ¶¶ 113(c)–(e).

¹⁴ See HDO at ¶¶ 113(g).

¹⁵ 47 C.F.R. § 1.229(c).

8. If the Presiding Judge determines that Avenal and Central Valley were not qualified applicants under Section 73.503(a) at the time they filed their applications, then the several Issues designated in the HDO relating to Avenal's and Central Valley's respective responsibilities for the operation of Stations KAAX (FM) and KYAF (FM) would be moot.¹⁶ In addition, if Avenal and Central Valley were not qualified applicants, that would form an independent basis upon which to revoke the construction permits for Stations KAAX (FM) and KYAF (FM) and to dismiss the pending applications for licenses to cover these permits. For these reasons, the Bureau's request to add an issue concerning Avenal and Central Valley's qualifications as applicants is appropriate.

9. Avenal and Central Valley also suggest that Section 73.503(a) of the Rules and the standards for applicants for noncommercial stations does not apply to them.¹⁷ Specifically, Avenal and Central Valley confusingly argue – without citation to any Rule or Commission precedent – that they should not be held to the standards for non-commercial stations because “their status could be changed by minor amendment from non-commercial to commercial.”¹⁸ Even if this assertion were legally accurate, Avenal and Central Valley do not demonstrate that they sought to modify the status of these Stations or ever contemplated doing so. Indeed, as is substantiated by the Commission's Consolidated Database System, both of these Stations remain designated as non-commercial educational (NCE) stations.¹⁹ Therefore, the proposed issue concerning whether Avenal and Central Valley were qualified applicants at the time they filed their applications is appropriate for consideration.

¹⁶ See, e.g., Motion at 4-6; HDO at ¶¶ 113(c)–(e).

¹⁷ See Opposition at 3-4.

¹⁸ See *id.* at 3.

¹⁹ See, e.g., Enforcement Bureau's Status Report, filed Nov. 7, 2014, at 2.

The Bureau's Reply to Zawila's Opposition

10. Mr. Zawila's Opposition appears to raise three arguments – none of which offer a basis upon which to deny the Bureau's Motion. First, Mr. Zawila argues that the question regarding the control and ownership of Avenal and Central Valley is already before – and should be decided by – the Media Bureau.²⁰ The parties already offered this as an option to the Presiding Judge during the June 3, 2015 teleconference. As is evident from *Order*, FCC 15M-21, the Presiding Judge has already rejected that option.²¹

11. Second, Mr. Zawila argues – without relying on a single legal citation – that adding an issue to the proceeding regarding the control and ownership of Avenal and Central Valley fails to address the matter of who is authorized to act as counsel for these entities and as such somehow denies those entities' their right to counsel.²² Yet, the Bureau's Motion seeks to resolve this very question and proposes the addition of an issue to determine who had the proper authority to make representations on behalf of Avenal and Central Valley.²³ Moreover, Avenal and Central Valley can hardly claim to be denied their "right to counsel" when, at present, they are being represented by two sets of counsel – Mr. Zawila and Mr. Couzens. Although the Bureau agrees that it complicates the proceeding for Avenal and Central Valley to have two voices, it is for precisely this reason that the control and ownership question must be resolved.

12. Third, Mr. Zawila argues that by seeking to add an issue concerning Avenal and Central Valley's qualifications at the time they filed their respective applications for Stations KAAX (FM) and KYAF (FM), the Bureau is somehow seeking to challenge these entities'

²⁰ See Zawila's Opposition at 4.

²¹ See *Order*, FCC 15M-21, at 2-3.

²² See Zawila's Opposition at 4-6.

²³ See Motion at 3; 9-10.

corporate status in California – an inquiry which Mr. Zawila claims is beyond the Commission’s jurisdiction and which must be resolved through a *quo warranto* proceeding.²⁴ The Bureau, however, is not challenging any entity’s status – it is merely seeking to determine whether Avenal and Central Valley were incorporated at the time of filing. Commission precedent demonstrates that inquiring into whether an applicant was recognized as a corporate entity at the time that entity filed an application for a non-commercial educational station is well-within the Commission’s jurisdiction.²⁵ Finally, there is nothing in the Bureau’s Motion to suggest that its inquiry would raise questions concerning Avenal and Central Valley’s corporate existence that would warrant a *quo warranto* proceeding.

Conclusion

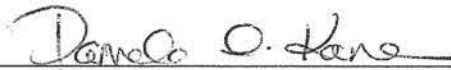
13. For the foregoing reasons, and those articulated in the Bureau’s Motion, the Bureau respectfully requests that the Presiding Judge enter an Order adding issues directed to (a) the ownership and control of Avenal and Central Valley and (b) whether Avenal and Central Valley were qualified applicants at the time they filed their applications for Stations KAAX (FM) and KYAF (FM).

²⁴ See Zawila’s Opposition at 8.

²⁵ See, e.g., *Applications For Review of Decisions Regarding Six Applications For New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13394 (Aug. 23, 2013) (noting that applicants must “be incorporated or otherwise organized in a form recognized under state law *at the time of filing*” in order to qualify for the NCE FM license); see *Hope Radio of Rolla, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 7754, 7754 (May 14, 2013) (recognizing that to be eligible to hold an authorization for an NCE service, the applicant “must be a public agency or non-profit private foundation, corporation, or association that is recognized by the laws of the state in which it proposes to operate at the time it submits its application”); *WTL Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2475, 2478 (Feb. 8, 2008) (dismissing application for NCE station because the applicant was not incorporated as of the date on which it filed its application); *Sonido Internacional Cristiano, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2444, 2448-49 (Feb. 8, 2008) (dismissing application for NCE station because the applicant was not incorporated as of the date on which it filed the application).

Respectfully submitted,

Travis LeBlanc
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July 1, 2015

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 1st day of July, 2015, sent copies of the foregoing "ENFORCEMENT BUREAU'S REPLY BRIEF IN SUPPORT OF ITS SUPPLEMENTAL MOTION TO ADD ISSUES WITH PROPOSED ORDER" to:

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